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No. 2.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

THE GULF, COLORADO & SANTA FE RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TEXAS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

ROBERT VANCE DAVIDSON,
Attorney General of Texas.

AUSTIN PRINTING CO.

No. 306.

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OCTOBER TERM, 1905.

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PLAINTIFF IN ERROR,

VS.

THE STATE OF TEXAS, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TEXAS.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

STATEMENT OF THE NATURE AND RESULT OF THE SUIT.

This was a suit brought by the State of Texas to recover of the plaintiff in error a penalty for extortion committed in that the plaintiff in error, a railroad company, charged, collected and received from the Samuel Hardin Grain Company, a compensation of 25 cents per one hundred pounds for the transportation of a carload of corn from Texarkana in Texas to Goldthwaite in Texas, when the rate of compensation for such service has been fixed by the Railroad Commission of Texas at the sum of 12 1-2 cents per hundred pounds.

The plaintiff in error admitted the truth of the charge as made by the State, but denied that the shipment upon which the charge was made was an intrastate shipment and claimed that it was an interstate shipment, and that consequently the rates prescribed by said Railroad Commission were not applicable to it.

On December 23, 1901, the Samuel Hardin Grain Company, doing business at that time at Kansas City, Missouri, offered to sell

to Sayler & Burnett, at Goldthwaite, Texas, No. 2 mixed corn at 86 1-2 cents per bushel delivered on the railway track at Goldthwaite, and this offer was accepted.

The Samuel Hardin Grain Company did not at that time have the corn, and on December 24th, to fill the order, it contracted with the Harroun Commission Company of Kansas City, Missouri, to purchase the corn at 75 1-2 cents per bushel, delivered at Texarkana, Texas. Previous to this the Harroun Commission Company had contracted for the purchase of corn to be delivered at Texarkana, Texas, which corn had been shipped from Hudson, S. D. The receiving carrier at Hudson was the Chicago, Milwaukee & St. Paul Railway Company, which issued a bill of lading by the terms of which the corn was consigned to Forrester Bros., Texarkana, Texas, and the shipment was made in cars of the Chicago, Milwaukee & St. Paul Company, care of the Kansas City Southern Railway Company at Kansas City, Missouri, with the privilege of stopping the corn at Kansas City for inspection and transfer. The corn reached Kansas City on December 17th; was there unloaded, sacked and transferred to the Kansas City Southern Railroad Company, which on December 31, 1901, issued a bill of lading reciting that the same was received from Forrester Bros. and consigned to Texarkana, Texas, to shipper's orders, notify Harroun Commission Company; and reciting further that the freight of 14 cents per hundred pounds was prepaid.

The corn in car No. 3845 P. G. was the corn on account of the overcharge on which the defendant was sued.

The Harroun Commission Company paid no freight on the corn from Hudson, S. D., to Texarkana, Texas, as it had been purchased to be delivered at Texarkana.

The car containing the corn was delivered in pursuance of its contract by the Harroun Commission Company to the Samuel Hardin Grain Company at the town of Texarkana, within the State of Texas.

The Texas & Pacific Railway Company, which operated a line of railroad from Texarkana, in Texas, to Fort Worth, Texas, at which point it connected with the road of the defendant corporation, received the car in which the corn was, and executed a bill of lading in the ordinary form agreeing to transport the car from Texarkana over its line of road to Fort Worth, and there deliver it to the plaintiff in error to be by it transported to Goldthwaite, a point upon its line of road.

In the trial court it was agreed "that the two cars of corn in question were originally shipped from Hudson, South Dakota, under a bill of lading showing under the head 'Marks & Consignee,' in the said

bill as follows: 'Forrester Bros., Texarkana, Texas. Care Kansas City Southern at Kansas City, Mo. Stop at Kansas City for inspection and transfer.' The said bill of lading being issued by the Chicago, Milwaukee & St. Paul Ry. Co., and containing a provision limiting the liability of each carrier to its own road, and providing that the said C., M. & St. Paul Ry. Co. should not be liable beyond its own line; and said corn was shipped under a waybill covering freight to be forwarded from Hudson, S. D., to Kansas City, Mo., showing on the face of said bill the consignee as Forrester Bros., Texarkana, Texas. The said way bill contained a notation to 'Stop at Kansas City for inspection and transfer.' The corn was shipped from Kansas City, Mo., over the Kansas City Southern Ry. Co., under a bill of lading made out at Kansas City to Forrester Bros., showing the consignee and marked as follows: 'Shippers order. Notify Harroun Commission Co., Texarkana.' The bill of lading from Kansas City being executed by the Kansas City Southern Ry. Co. and marked on the face 'Freight prepaid 14c. per hundred lbs.'

"That the rate of freight paid on the said corn into Kansas City from Hudson, S. D., was 18c per hundred pounds, and the rate of freight paid on the corn from Kansas City to Texarkana, Texas, was 14c per hundred pounds, making a total freight paid from Hudson, South Dakota, to Texarkana, Texas, of 32c per hundred pounds. That the corn reached Kansas City, December 17th, and was transferred from C., M. & St. P. Ry. cars to the P. & G. cars at that point. That it was unloaded and sacked at Kansas City.' "

The trial resulted in a judgment assessing a penalty of $100 against the plaintiff in error, from which an appeal was taken.

The disposition of this case in the Appellate Courts of Texas is shown by 32 Texas Civ. App., 1, and 97 Texas (Sup. Ct.), 274.

The sole question for the determination of this honorable court is as to whether the shipment from the town of Texarkana, within the State of Texas, to the town of Goldthwaite, also within the State of Texas, constituted an intrastate shipment or an interstate shipment. If it was the former, plaintiff in error was subject to the penalty imposed by the judgment of the court; if it was the latter, the plaintiff in error incurred no liability on account of the acts complained of.

PROPOSITIONS OF DEFENDANT IN ERROR *CONTRA* PROPOSITIONS OF PLAINTIFF IN ERROR.

FIRST PROPOSITION.

By the laws of Texas (Revised Statutes of Texas, Art. 1333) the judge shall state in writing the conclusions of facts found by him, separately from the conclusions of law; and this court, upon a writ of error to a State court, has no right to review the decision below upon the ground that the finding was against the evidence or weight of the evidence. Nor will this court review a decision of a question of fact, even where, by the local practice of a State, the law and the facts are tried together by the judge without a jury; and it appearing from the findings of the State courts (district court, Civil Appeals and Supreme Court):

(a) That prior to December 17, 1901, Harroun Commission Company purchased from Forrester Bros. of Hudson, South Dakota, two cars of corn in bulk, to be shipped from Hudson, S. D., to Texarkana, Texas; that the said corn was shipped under a bill of lading which provided for through transportation at the through rate of freight between said points, with the privilege, on the part of Harroun Commission Company, to stop the corn at Kansas City for inspection and transfer, and that the through freight charges for the entire distance were prepaid by Forrester Bros. at Hudson, S. D.;

(b) That on December 24, while said corn was in transit from Hudson to Texarkana, Harroun Commission Company sold that amount of corn to Hardin Grain Company to be delivered at Texarkana; Hardin not knowing at the time of purchase whence the corn to fill his order would come;

(c) That two days after said sale, Hardin was informed that the corn with which Harroun Commission Company expected to fill his order would be sacked in Kansas City and forwarded to Texarkana;

(d) That Harroun Commission Company delivered the corn at Texarkana, Texas, according to agreement with the Hardin Grain Company, and that the corn was not paid for by the said Hardin Grain Company until its arrival at Texarkana, Texas, in pursuance of said agreement before made between the said Harroun Commission Company and the Hardin Grain Company;

(e) That on December 31, 1901, the date of shipment from Kansas City to Texarkana, Texas, Harroun Commission Company informed the Hardin Grain Company that the corn to fill the lat-

This court will not disturb such "findings," viz.: that the original shipment was made in good faith to terminate at Texarkana, Texas, and that Hardin Grain Company had no connection with this shipment: and had no control of the grain until it reached Texarkana.

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(e) That on December 31, 1901, the date of shipment from Kansas City to Texarkana, Texas, Harroun Commission Company informed the Hardin Grain Company that the corn to fill the lat-

ter's order **HAD BEEN LOADED**, and requested instructions how to ship said corn from Texarkana, thereupon, in compliance with such request, blank bills of lading were made out by the Hardin Grain Company to be executed by the Texas & Pacific Railway Company at Texarkana for the shipment of the corn from that place to Goldthwaite, Texas. **THIS WAS THE FIRST INFORMATION THAT THE HARROUN COMMISSION COMPANY HAD OF THE FINAL DESTINATION AND DISPOSITION OF SAID CORN;—**

STATEMENT FROM RECORD.

The findings of fact made by the trial court which were approved by the Court of Civil Appeals and the Supreme Court of Texas, are as follows:

I.

The Railroad Commission of Texas, after due notice of the time and place where the rates would be fixed by it, fixed and established the rates which might be charged by a railroad, or by two or more lines of railroad, whether under the same management and control or not, for the transportation of corn, between points within the State of Texas, in carload lots at 12 1-2 cents per one hundred pounds for a distance of over 165 miles, which rate became effective on March 10, 1899, and remained effective until the present time, of which action the defendant and the Texas & Pacific R. R. Company received legal notice before the rates prescribed became effective.

II.

The distance from Texarkana, Texas, to Goldthwaite, Texas, over the Texas & Pacific Railway to Fort Worth and from Fort Worth over the G. C. & S. F. Railway to Goldthwaite, Texas, is more than 165 miles.

III.

The Texas & Pacific Railway Company owns and operates a railroad from Texarkana, Texas, to Fort Worth, Texas, and the defendant from Fort Worth, Texas, to Goldthwaite, Texas, and each of these points and all intermediate points on each of said roads are entirely within the State of Texas.

IV.

The Texas & Pacific Railway Company executed a bill of lading dated Texarkana, Texas, January, 13, 1902, which bill of lading purported to acknowledge the receipt from the Samuel Hardin Grain Company at Texarkana, Texas, of one car of sacked corn, same being car No. 3845 P. & G., and which bill of lading purported to show that the said corn was consigned to shipper's order, notify Saylor & Burnett, Goldthwaite, Texas.

V.

Said carload of corn was transported by the Texas & Pacific Railway Company to Fort Worth and there delivered to the defendant, and was by it received and transported to Goldthwaite, Texas, where it arrived on the 17th day of January, 1902, and Saylor & Burnett, who were acting for Samuel Hardin Grain Company, tendered to the defendant's agent at Goldthwaite $82.50, in payment of the freight charges thereon; the said agent declined to accept said amount of $82.50 in payment of said charges, and demanded $165 for the transportation of said carload of corn from Texarkana, Texas, to Goldthwaite, Texas.

VI.

The agent of the defendant at Goldthwaite, Texas, charged, collected, demanded and received from Samuel Hardin Grain Company $165 for the transportation of said carload of 66,000 pounds of corn from Texarkana, Texas, to Goldthwaite, Texas; in so charging, collecting, demanding and receiving said $165 the said agent of the defendant was acting under instructions from the executive officers and attorneys of the defendant company, who believed and advised that said shipment was interstate commerce, and his action in so doing was subsequently ratified by the defendant.

VII.

The Samuel Hardin Grain Company made complaint to the Railroad Commission of Texas of the action of the defendant in charging more than 12 1-2 cents per hundred pounds for transporting the said corn, whereupon the Railroad Commission investigated such complaint and ordered this suit to be instituted in accordance with the provisions of Article 4568 of the Revised Statutes of Texas.

VIII.

On December 23, 1901, the Samuel Hardin Grain Company, at Kansas City, Mo., offered to sell Saylor & Burnett, at Goldthwaite, Texas, No. 2 mixed corn at 86 1-2 cents per bushel for delivery on Ry. track at Goldthwaite, and this offer was accepted for two carloads of corn. This offer and acceptance was by telegraphic communication between the parties at their respective places of business. The Hardin Grain Company did not at that time have the corn, but on December 24, 1901, to fill the order it contracted with the Harroun Commission Company of Kansas City for the purchase of two 66,000-pound cars of No. 2 mixed corn at 75 1-2 cents per bushel, to be delivered at Texarkana, Texas, to the Hardin Grain Company. Previously to this the Harroun Commission Company had contracted for the purchase of two cars of corn to be delivered to it at Texarkana, Texas, and with these two cars it expected to and did fill the order of the Hardin Grain Company. These cars had originated in Hudson, S. D. The receiving carrier at Hudson was the Chicago, Milwaukee & St. Paul Railway Company, who issued bills of lading limiting its liability to losses occurring on its road with a like limitation of liabilty of all other carriers who should handle said corn in transit to its destination. By the terms of said bills of lading the corn was consigned to "Forrester Bros., Texarkana, Texas," and shipment made in cars of C. M. & St. P. Ry. Co., care of Kansas City Southern Railway at Kansas City, Mo., with the privilege to stop the corn at Kansas City for inspection and transfer. The corn reached Kansas City on December 17, 1901, was there unloaded, sacked and transferred to the Kansas City Southern Railway Co., who, on December 31, 1901, issued bills of lading reciting that the corn was loaded in cars No. 3845 P. G. and No. 4189 P. G., that same was received of Forrester Bros. and consigned as follows: "Shipper's order, notify Harroun Commission Company, Texarkana, Texas," and reciting further that freight 14 cents per hundred pounds was prepaid, and one of these cars, to-wit: car "No. 3845 P. G." is the car in controversy in this suit.

IX.

The Harroun Commission Company paid no freight on the corn from Hudson, S. D., to Texarkana, Texas, as it had purchased it to be delivered at Texarkana.

X.

The freight on the corn from Hudson to Texarkana was as follows: 18 cents per hundred pounds from Hudson to Kansas City and 14 cents from Kansas City to Texarkana, all of which was paid by the vendors of Harroun Commission Company.

The minimum interstate rate from Hudson, S. D., to Goldthwaite, Texas, was 46 cents per hundred pounds, which would have been apportioned as follows: 18 cents from Hudson to Kansas City, and 28 cents from Kansas City to Goldthwaite, Texas. The G. C. & S. F. Ry. Co., the T. & P. Ry. Co., and the Kansas City Southern Ry. Co., together with other connecting lines from Kansas City, Mo., to Goldthwaite, Texas, had established a joint tariff of 35 cents per hundred pounds on shipments from Kansas City to Goldthwaite via Texarkana and originating in Kansas City, had agreed on a division of that rate between them and had filed tariffs establishing such rate with the Interstate Commerce Commission, and by such steps had brought itself within the provisions of the interstate commerce law.

XI.

The Hardin Grain Company's officers kept themselves informed of interstate commission freight rates and of the State commission rates, and the reason why they contracted for the corn to be delivered to them at Texarkana was because they could fill their contract with Saylor & Burnett at Goldthwaite at about 1 1-2 cents per bushel cheaper than they could if they bought the corn for delivery to them at Kansas City and had it shipped from Kansas City to Goldthwaite.

XII.

At the time of the purchase contract between the Hardin Grain Company and the Harroun Commission Company, Hardin, the manager of the former company, intended that the corn to be thereby acquired should go to Saylor & Burnett and should be shipped to Goldthwaite, from Texarkana, as soon as practicable, and on December 26, 1901, **TWO DAYS AFTER THIS CONTRACT FOR PURCHASE HAD BEEN MADE**, Hardin was informed that the corn with which Harroun Commission Company expected to fill his order would be sacked at Kansas City and be shipped out of Kansas City to Texarkana, **BUT AT THE TIME OF MAKING THE CONTRACT HE DID NOT KNOW** from whence the corn would come.

(It will be observed that paragraphs 11 and 12 are included in paragraph 11 of brief of plaintiff in error.)

XIII.

On December 31, 1901, the date of shipment from Kansas City to Texarkana, Harroun Commission Company informed the Hardin Grain Company that the corn to fill the latter's order had been loaded to start to Texarkana, and requested instruction as to how the corn should be shipped from Texarkana for the guidance of F. L. Adkins, their agent at that place, who would attend to such re-shipping for the Hardin Grain Company, as per former understanding. Thereupon and in compliance with such request blank bills of lading were made out by the Hardin Grain Company in Kansas City and furnished to the Harroun Commission Company, to be forwarded to F. L. Adkins. These bills of lading were to be executed by the Texas & Pacific Railway Company, and F. L. Adkins, as agent for the Hardin Grain Company, and were for shipment of the corn to Goldthwaite, Texas, consigned to "Shipper's order, notify, etc.," giving the numbers and initials of cars, which information had been furnished by the Harroun Commission Company, and on January 14, 1902, the re-shipment having been made as per instructions, the bills of lading duly executed by the Texas & Pacific Ry. Co., were by Harroun delivered to Hardin Grain Company, who thereupon paid the Harroun Commission Company $1779.64, the purchase price previously agreed upon for the corn, and the receipt of said blank bills of lading by the Harroun Commission Company was the first information had by that company of the intended final destination and disposition of the corn.

XIV.

Neither Hardin Grain Company nor Harroun Commission Company had any store or warehouse at Texarkana, but under the agreement between the two companies (Hardin and Harroun), one F. L. Adkins, who was the agent of the Harroun Commission Company, and stationed at Texarkana, re-shipped the corn at Texarkana for the Hardin Grain Company. That shipment was to Goldthwaite, Texas, over the Texas & Pacific Ry. Co. and the G. C. & S. F. Ry. Co., by bill of lading reciting its receipt from Hardin Grain Company, and consigned to "Shipper's order, notify Saylor & Burnett, Goldthwaite, Texas," and was transferred under original seals and without breaking packages, to the Texas & Pacific Ry.

Co., after having remained in Texarkana five days; the only thing done by F. L. Adkins was to surrender the Kansas City Southern bill of lading, have the cars set over on the T. & P. Ry. and take a bill of lading from the latter company. The corn reached Texarkana January 7, 1902, and was shipped out from Texarkana January 13, 1902; the defendant was not a party to the bill of lading executed at Texarkana.

XV.

On December 31, 1901, Hardin Grain Company mailed to Saylor & Burnett an invoice of the corn, in the form of an account stating the car numbers and initial, the amount of corn and price to be paid by Saylor & Burnett.

AUTHORITIES.

Authorities to the point, that under the Texas statutes and practice, an objection to the finding of facts that they are against the preponderance of the evidence is immaterial. The question on appeal is whether there is evidence to support the finding, not as to preponderance.

Wells v. Yarborough, 84 Texas (Sup. Ct.), 660.

Railroad Co. v. Echols, 87 Texas (Sup. Ct.), 339.

Authorities to the point, that the findings of fact of the Supreme Court of Texas are conclusive upon this court and will form the basis of its decision.

Mining Co. v. Land Co., 194 U. S., 220.

Adams v. Church, 193 U. S., 510.

Thayer v. Spratt, 189 U. S., 346.

Egan v. Hart, 165 U. S., 188.

Dower v. Richards, 151 U. S., 658.

SECOND PROPOSITION.

The Supreme Court of Texas did not err in its conclusion of law in finding that the shipment in controversy from Texarkana, Texas, to Goldthwaite, Texas, was not an interstate shipment, but originated and terminated in the State of Texas.

STATEMENT.

The corn which was eventually shipped to Goldthwaite by Hardin Grain Co.,had been started by Forrester Bros., from Hudson, S. D., to Texarkana, Texas, to which point a bill of lading had been issued, and freight paid, and arrived at Kansas City on the 17th day of

December, 1901, and was unloaded for inspection and transfer as permitted by the bill of lading. The negotiations between the Hardin Grain Company and Saylor & Burnett which resulted in the sale of the corn to the last named firm did not begin until the 23rd day of December, 1901. (R., p. 10.) *The Hardin Grain Company did not pay for the corn until it was delivered at Texarkana, Texas, and bills of lading from Texarkana to Goldthwaite received by it.* (R., p. 12.)

The statement of the Supreme Court of Texas is: "The substance of the facts as found by the trial court and the Court of Civil Appeals seems to us to be these: The Hardin Grain Company, doing business in Kansas City, Missouri, having made a contract with parties at Goldthwaite, Texas, for the delivery of two carloads of corn at that place, in order to comply with their undertaking, contracted to purchase of Harroun Commission Company, who were also doing business at Kansas City, Missouri, and had an agent at Texarkana, Texas, the same quantity of corn, to be delivered at the point last named; that the corn with which the Harroun Commission Company proposed to fulfill their contract was shipped from South Dakota to Texarkana, Texas, through Kansas City, Missouri; that while it was in transit at the latter place, the Harroun Commission Company became apprised of that fact; that the corn was delivered at Texarkana, Texas, in accordance with the agreement, to the Hardin Grain Company, who thereupon shipped it in the same cars, without breaking bulk, over the Texas & Pacific Railway and its connecting lines to Goldthwaite, Texas." (97 Texas, 284.)

AUTHORITIES.

Interstate Commerce Act, Section one (1).
Int. State Com. Com. v. Brimson, 154 U. S., 457.
Railroad Co. v. Int. St. Com. Com., 162 U. S., 191.
State of New York v. Knight, 192, U. S., 21.
Brown v. Houston, 114 U. S., 622.
Diamond Match Co. v. Ontonogon, 188 U. S., 82, 92.
Coe v. Erroll, 116 U. S., 517.
Railroad Co. v. Osborne, 10 U. S. Appeals, 430.
Bridge Co. v. Railway Co., 37 Fed. Rep., 613. (Opinion, Judge Jackson.)
G., C. & S. F. Ry. Co. v. The State of Texas, 73 S. W. Rep., 429. (Opinion of Civil Appeals in this case.)
G., C. & S. F. Ry. Co. v. State of Texas, 97 Texas, 274. (Opinion of Supreme Court of Texas in this case.)
Ft. W. & D. C. Ry. Co. v. Whitehead, 6 Texas Civ. App., 595.

ARGUMENT.

Plaintiff in error contends that there was a novation in shipment at Kansas City, and that when the corn left that point it was the beginning of what was intended by the interested parties to be the movement of an interstate shipment from Kansas City to Goldthwaite via Texarkana; but the "findings" of the Texas courts show that the original shipment of this corn to Texarkana was made in good faith several days prior to the contract under which Hardin Grain Company bought it, and without any intention on the part of any one that it should be re-shipped to Goldthwaite, and that the privilege of stoppage in transit at Kansas City for inspection and transfer was also contracted for and extended to shipper in good faith. Thus the character and status of this shipment, until it reached its destination at Texarkana, in the State of Texas, became fixed *prior* to the sale of the corn to Hardin Grain Company, and several days prior to the date of contract of sale by that company to Saylor & Burnett of Goldthwaite. Indeed, insofar as is disclosed by this record, the status and character of this shipment to the point within the State of Texas became thus fixed at a time when the only parties to the shipment of said corn were Forrester Bros. and the Harroun Commission Company, Hardin Grain Company being an absolute stranger to the transaction.

THIRD PROPOSITION.

Transportation from a point in one State to a point in another State constitutes interstate commerce; but when the commodity transported has reached the termination of its journey and has been delivered to the consignee, it ceases to be a subject of interstate commerce and the subsequent shipment from the point at which it has been delivered to another point in the State, is an intrastate shipment.

STATEMENT.

This corn was shipped by Forrester Bros. from Hudson, S. D., via. Kansas City, Mo., to Texarkana, in the State of Texas, and was there paid for by Hardin Grain Company. (R., pp. 10-12.)

The freight was prepaid at Hudson, South Dakota, from that point to Texarkana, Texas, by Forrester Bros. the vendors of Harroun Commission Company. (R., p. 11.)

The corn arrived at Kansas City on December 17, 1901. (R., p. 10.)

While en route from Hudson to Texarkana, the corn was sold to

the Hardin Grain Company on December 24, 1901. The negotiations for the sale to Saylor & Burnett began on December 23, 1901. (R., p. 10.)

On December 31, 1901, the corn was forwarded from Kansas City to Texarkana, and was subsequently shipped from Texarkana, Texas, to Goldthwaite, Texas. (R., p. 12.)

AUTHORITIES.

Coe v. Errol, 116 U. S., 517.
Ft. W. & D. C. Ry. Co. v. Whitehead, 6 Texas C. C. A., 595.
C., N. O. & T. P. R. R. Co. v. Int. St. Com. Com., 162 U. S., 184, 56 Fed. Rep., 925.
C. & N. W. Ry. Co. v. Osborne, 52 Fed. Rep., 912.
Int. St. Com. Com. v. B. Z. & C. Ry. Co., 77 Fed. Rep., 942.
Int. St. Com. Com. v. Detroit, etc., Ry. Co., 167 Fed. Rep., 642.
United States v. Int. St. Com. Com., 81 Fed. Rep., 783.
G., C. & S. F. Ry. Co. v. M. S. S. Co., 86 Fed. Rep., 407.
M. & I. R. R. & T & L. Co. v. G. & S. S. R. R. Co., I Int. St. Com. Com. Reports, 30.

FOURTH PROPOSITION.

When the corn arrived at Texarkana and was delivered to the consignee it became a part of the property situated within the State of Texas and subject to the laws of that State.

STATEMENT.

The corn reached Texarkana, Texas, January 7, 1902, and was delivered to the Hardin Grain Company. On the 13th day of January, 1902, it was shipped by them over the road of the Texas & Pacific Railway Company to Goldthwaite, Texas, under bills of lading of Texas & Pacific Railway Company, executed at Texarkana, Texas. (R., p. 12.)

AUTHORITIES.

17 Am. & Eng. Enc. of Law (2nd Ed.), 71.
Robbins v. Shelby Co., 120 U. S., 497.

ARGUMENT.

The proposition is in no way attempted to be controverted that property passing through a State on a through shipment from another State continues to be interstate commerce, even if the shipment should

suffer temporary stoppage, but when the commodity reaches its termination according to the contract under which it was shipped and comes to a stop for a new shipment or for such other uses as the shipper or owner may see proper to make of it, then it has lost its character as a commodity of interstate commerce; and especially is this the case where the ownership of the goods has undergone a change after the termination of the original shipment into the State.

Here the shipment of corn from without the State terminated at Texarkana. A new contract for the shipment of the corn from that place to Goldthwaite was there made, and it was on account of the overcharge on this last shipment that this suit was brought.

REMARKS.

It is respectfully submitted that from the record in this cause, and from the foregoing propositions, statements and authorities, this Honorable Court will affirm the judgments and decisions of the Texas courts on the grounds among others that the shipment in question, was made, in fact and in good faith, to Texarkana, Texas, by the Harroun Commission Company; and that it was not until the shipment and arrival of said goods at Texarkana, that they were delivered to, or paid for, by the Hardin Grain Co., and not until then did the title thereto pass to the Hardin Grain Co., and that this last named company had no connection with the shipment of corn to Texarkana. Yet counsel for the State submits the following propositions, believing that they are the law and that the same will be announced as the law by this honorable court if it deems it proper or necessary in the disposition of the case.

FIFTH PROPOSITION.

When commodities have been transported from a point without the limits of a State to a point within the State, to which, under the contract of shipment, they were to be transported, and the contract of shipment complied with, and ended, such commodities have ceased to be articles of interstate commerce, and are thereafter in all respects subject to the laws of the State in which they may be, and this although the shipper may have intended from the beginning that they were to be immediately taken to some place within the State other than that to which the carrier had contracted to convey them. The motives of an importer or shipper can not be looked to for the purpose of causing commodities to continue subjects of interstate commerce, which would have ceased to be such but for such motives.

SIXTH PROPOSITION.

The Texas & Pacific Railway Co., the carrier which transported the corn from Texarkana to Fort Worth, and the plaintiff in error, which transported it from Fort Worth to Goldthwaite, were not shown by the evidence to have had any agreement with other carriers to transport said corn, by through bill of lading or in any other manner, and upon the receipt of said corn at Texarkana, Texas, by the Texas & Pacific, it had the right to demand and receive its Texas State rate to Fort Worth, and the plaintiff in error its Texas State rate from Fort Worth to Goldthwaite, and neither of said railroads had the right to charge more or any other rate, or voluntarily convert a local shipment into an interstate shipment, especially when such interstate shipment from Hudson, South Dakota, to Texarkana, Texas, had terminated at Texarkana, and the corn had been there delivered; and it is immaterial what might have been the motives or intentions of any of the parties to the transaction in the shipment of the corn to Texarkana.

STATEMENT.

See statement under foregoing propositions and also findings of fact of Supreme Court of Texas, set forth in full in preceding pages.

AUTHORITIES.

Int. Com. Com. v. C., N. O. Ry. Co., 66 Fed. Rep., 925.
C,, N. O. Ry. Co. v. Int. Com. Com., 162 U. S., 192.
S. P. Ry. Co. v. Int. Com. Com., 200 U. S., 553.
Texas, etc., R. R. Co. v. Int. Com. Com., 43 Fed. Rep., 37.
L. & N. R. R. Co. v. West Coast Naval Stores Co., 198 U. S., 483.
United States v. Knight Co., 156 U. S., 13.
Railway Co. v. Osborne, 52 Fed. Rep., 912. (Opinion by Justice Brewer.)

ARGUMENT.

The shipper and the carrier have a right to make any contract with reference to the transportation of interstate commerce they may see proper to make, provided it is not in violation of the interstate commerce law; the interstate commerce law places upon them only two restrictions, viz.: that the rates shall not be unjust or unreasonable and shall not work unjust discrimination. (So. Pac. Ry. Co. v. Commission, 200 U. S., 554; Social Circle case, Cin., N. O. & Tex. Pac. Ry. Co. v. Int. St. Com. Com., 162 U. S., 184.)

In that case the goods were shipped on a through bill of lading

from Cincinnati, Ohio, to Social Circle, Ga., being carried on the last stage of their journey by the Georgia Railway Company (a Georgia corporation) from Atlanta, Ga., to Social Circle, Ga., The only issue was whether the Georgia Railway Company was, as to the transaction in question, subject to the provisions of the Interstate Commerce Commission law. The service rendered by the Georgia Railroad Company being wholly within the State of Georgia, it was contended that the Interstate Commerce Commission had no jurisdiction over it, although it had entered into the carriage of foreign freight by agreeing to receive the goods by virtue of foreign through bills of lading and participate in through rates and charges and thereby made arrangement for the continuous carriage or shipment from one State to another. The court say:

"We are unable to accept this conclusion. It may be true that the Georgia Railroad Company, as a corporation of the State of Georgia, and whose entire road is within that State, may not be legally compelled to submit itself to the provisions of the act of Congress, even when carrying, between points in Georgia, freight that has been brought from another State. It may be that if, in the present case, the goods of the James & Mayer Buggy Company had reached Atlanta, and there and then, for the first time, and independently of any existing agreement with the railroad companies that had transported them thither, the Georgia Railroad Company was asked to transport them, whether to Augusta or Social Circle, that company could undertake such transportation free from the control of any supervision, except that of the State of Georgia."

If it was competent for the Georgia Railroad Company to refuse to become a party to interstate business, why is it not equally competent for the shipper to say how far his goods shall go or where they shall cease to be articles of interstate commerce? If the railroad company could have refused to bill the goods to a point beyond Atlanta, then the James & Mayer Buggy Company could have refused to have allowed them to be billed beyond that point. When they once reached Atlanta in either event and the contract of shipment had ended, and the freight been paid, then according to the doctrine announced by the Supreme Court of the United States, the Georgia Railroad Company would have been compelled to receive the goods and ship them to a point on its line of railway subject to the laws of the State of Georgia, and at the rate prescribed by the Commission of that State.

The first part of the shipment, that is, that from Cincinnati to Atlanta, was an interstate shipment; the latter part, that is, from Atlanta to Social Circle, would have been an intrastate shipment.

The case is in all respects like the one at bar.

The parties owning the corn had a right to make such contract as they could for its transportation to Texarkana, Texas, and such contract was made. The railway company could not have been compelled to have contracted for the delivery of the corn at a point beyond the line of its road. On the other hand, the shipper had a right to demand of the railway company the transportation of the corn to Texarkana at its published rate. That shipment was an interstate shipment.

When the corn reached Texarkana, the interstate shipment was at an end. The shipper had then the right to demand, under the laws of Texas, of any railroad to which it would tender the corn at Texarkana, Texas, to have it transported to any point in Texas which it might select, at the rate prescribed by the Railroad Commission of Texas.

When the commodity reached the point for which the contract for a continuous voyage had been made and the subject matter of the shipment delivered, the contract was completed. A connecting carrier, although it may have had a general traffic arrangement for interstate business with the original carrier by which the goods could have been shipped on a continuous voyage to a point beyond the terminus of its road, could not have been compelled to have transported this corn to a place on the line of its road for the consideration which it would have received as its proportion of the through rate.

The officers of the company could effectually have replied to a demand of the shipper for such rate, "The only reason you could have secured a contract for the continuous shipment at the through rate is because of our contract with the connecting carrier; we could not compel you to become a party to that contract and as you have not seen proper to take advantage of it you are not entitled to share in its benefits."

If this be not correct let us see what would be the consequence.

It is well known that the rate of transportation is much less per mile for a long than for a short distance. Suppose several carriers have entered into a traffic agreement by which they have fixed a rate from Kansas City to Goldthwaite, via Texarkana and Fort Worth, at 35 cents per hundred pounds, of which the Kansas City Southern, which connects Texarkana with Kansas City, is to get 10 cents, though its regular rate between the two points is 14 cents. A shipper tenders commodities to the Kansas City Southern at Kansas City and says: "I intend to ship these goods to Goldthwaite, Texas. I demand that you transport them as far as Texarkana, Texas, at the

rate which you would receive in the division between the connecting carriers."

Can any one doubt that the Kansas City Southern could successfully refuse to inquire into or consider in any way as to what the shipper intended to do with his property after it had reached the point to which that road was to transport it?

To carry the supposition further: If the shipper had intended the goods to go to Goldthwaite and if the Kansas City Southern could have been compelled to carry them to Texarkana for 10 cents per hundred pounds and if, after they had been delivered, and the freight paid, the shipper should have changed his mind and sold the property at Texarkana, or if it had been taken from him by law, or if for any other reason it never gets beyond Texarkana, could the road then sue and recover the difference between the freight paid, 10 cents per hundred pounds, and what should have been paid, 14 cents per hundred pounds, if the shipment had originally been intended to terminate at Texarkana as it actually did?

If such a suit could otherwise be maintained, could not the shipper defend successfully on the ground that his intention had been to have his property taken to Goldthwaite, and that it was what he intended, and not the contract made or the actual facts which governed?

The absurd result to which this would lead shows that a thing can not be changed from what it really is because of the intention, either secret or avowed, of its owner. It is not the intention to ship an article beyond the borders of a State in which it may be, but the actual starting of it on its continuous journey, which constitutes it interstate commerce.

In the case of Norfolk Ry. Co. v. Commonwealth, 57 Am. St. Rep., 829-30, this question is disposed of by the Supreme Court of Virginia in this way:

"Goods do not become articles of interstate commerce until actually put in motion for some place out of the State or committed to the carrier for such transportation, for the reason that though intended for exportation they may never be exported, as the owner has a perfect right to change his mind at any time."

In Coe v. Erroll, 116 U. S., 517, the point involved was as to whether saw-logs which had actually been started on their journey from a point within to a point without the State had ceased to be subject to taxation within the State in which they were, it being the established doctrine that an article of interstate commerce is not subject to taxation. The court say:

"Goods do not cease to be a part of the general mass of property in the State, subject, as such, to its jurisdiction and to taxation in the

usual way, until they have been transported or entered with a common carrier, for transportation to another State, or have started upon such transportation in a continuous route or journey."

And further the court says:

"Whenever a commodity has begun to move as an article of trade from one state to another commerce in that commodity between the States has commenced; but this movement does not begin until the articles have been shipped or started for transportation from one State to the other. The carrying of them in carts or other vehicles or even floating them to the depot where the journey is to commence is not a part of that journey. This is all preliminary work performed for the purpose of putting the property in a state of proper readiness for transportation. Until actually launched on their way to another State or committed to a common carrier for transportation to such State the destination is not fixed or certain. It may be sold or otherwise disposed of within the State and never put in cars for transportation out of the State. Carrying it from the farm or the forest to the depot is only an interior movement of the property entirely within the State, for the purpose, it is true, but only for the purpose, of putting it into the cars for transportation. It is no part of the exportation itself. Until shipped or started on its final journey out of the State its exportation is a matter altogether in fieri and is not at all a fixed and certain thing."

It will be observed that the court states that the article does not become a subject of interstate commerce until it is shipped or started on its *final* journey.

The meaning of this is, of course, until there has been a shipment which, unless interrupted in some way, will take the product beyond the borders of the State.

I think I can illustrate what is held by the Supreme Court of the United States in the quotation just made in a way which will make its application very clear.

If a dealer in cotton should see proper to concentrate his cotton at Galveston, not with the expectation or intention of selling it at that place, but with the expectation and intention of eventually shipping it to other States or to foreign countries, and if the cotton should be in Galveston on the first of January, under the doctrine of the decision just referred to, it would be subject to taxation, and for this reason, the cotton has not been started on its final journey. On the other hand if cotton purchased in the interior of the State and started on its final journey to a foreign country, should happen to be in Galveston on the first of January, it would not be subject to taxation because it is a subject of foreign commerce.

The intention of the shipper in each instance is that the product shall eventually go beyond the border of the State, but because of the fact that in one case the product had been started on its final journey out of the State it is not subject to taxation, while in the other, regardless of the intention of the shipper, it is subject to taxation because it has not yet started on its final journey; or, as is held by the court in the same case (on page 525):

"It is not the owner's state of mind in relation to the goods that determines whether they are subjects of interstate commerce or not, but it is the actual facts."

To the same effect is the decision of the Supreme Court in the case of United States v. E. C. Knight Co., 156 U. S., 13.

"The intent of the manufacturer does not determine the time when the article or product passes from the control of the State and belongs to commerce."

Defendant in error respectfully asks that the judgment of the Supreme Court of Texas be affirmed.

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